

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of
Abhari *et al.*

Docket No.: 2003B043D

Appl. No.: 10/825,348

Office of
Petitions

Confirmation No.: 8647

Filed: April 15, 2004

Examiner: Edward J. Cain
Art Unit: 1714

For: **FUNCTIONALIZED OLEFIN POLYMERS**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION FOR CONFIRMATION THAT REQUEST FOR CONTINUED
EXAMINATION WAS PROPER OR IN THE ALTERNATIVE
FOR REVIVAL UNDER 37 C.F.R §137(b)**

Sir:

Applicants Petition for confirmation that an October 31, 2007 request for continued examination ("RCE") was timely and proper, either alone or with Applicants' Supplemental submission of January 31, 2008.

In the alternative, if the RCE is found not proper and timely such that the above referenced application will become abandoned, Applicants petition under 37 C.F.R. §137(b) for revival based on unintentional delay.

Applicants request prompt examination of the above-referenced application.

BACKGROUND

It is unclear whether the present application is abandoned. While Petitioner believes that the present application is not abandoned, in an abundance of caution, Petitioner hereby submits this Petition. In the event that the present application is abandoned, Petitioner requests revival of the present application under 37 C.F.R. § 1.137(b). In the event that the present application is not abandoned, Petitioner requests that this Petition be dismissed as moot.

REMARKS

Applicants would like to thank Examiner Edward Cain and docketing specialist, Yolonda Middleton, for teleconferences discussing the status of this application. Although the Examiner and Ms. Middleton indicated that they intended to mail a notice of non-compliance providing a one month period to correct a purportedly defective RCE, Applicants were informed by phone on January 31, 2008 that a notice and period to correct defects was not forthcoming.

As of the filing of this petition, a notice of non-compliance, non-responsiveness, or abandonment has not been received. Accordingly, Applicants petition for confirmation that an October 31, 2007 request for continued examination (“RCE”) was timely and proper, either alone or with Applicants’ Jan. 31, 2008 Supplemental Submission. More specifically, if the “submission” requirement was not met by the IDS that was filed with the RCE and the PTO intended to so notify the Applicants by the mailing of a notice of non-compliance setting a one month period to file a responsive amendment, Applicants’ filing of the Amendment on January 31, 2008 pre-empted the need for the PTO to mail a notice of non-compliance. In the alternative, Applicants petition under 37 C.F.R. §137(b) for revival of the application based on for unintentional delay.

TIMELINE

On July 6, 2007 Applicants were mailed a Final Office Action. In response, Applicants filed an RCE on Oct. 31, 2007 and an information disclosure statement as the required submission ("Oct 31st RCE").

During the week of Nov. 5, 2007, Applicants' attorney communicated several times with the Examiner concerning Applicants' information disclosure statements. During that week, Applicants' attorney was informed that a notice of non-compliance may be mailed due to a purported defect in the Oct. 31st RCE, but a specific defect was not identified.

Applicants' paralegal, Kathy Crippins, and Attorney, Stephen Timmins, began regularly checking PAIR and contacting the examiner to determine whether a Notice had issued. For example by Nov. 9th, a notice of non-compliance was not mailed or made part of the imaged file wrapper, so Applicants again contacted the Examiner. The Examiner confirmed that a notice of non-compliance was not mailed or made part of the imaged file wrapper. Applicants' attorney was not informed why the RCE might be considered defective. By Nov. 14th, a Notice was not mailed and a defect was not identified. Similar inquiries were made in December.

In January, Mr. Timmins and a second paralegal, Susan Engelmann, continued checking PAIR and communicating with the Examiner and PTO docket specialist concerning the Notice of Non-compliance. For example on January 24st, Ms. Engelmann had another teleconference with the examiner to determine (a) whether a notice was forthcoming, and (b) whether Applicants would have one month to respond. The examiner confirmed that a notice was forthcoming and that Applicants would have more time to respond. Although Applicants' paralegal was told that an interview summary was forthcoming, no interview summary has been made part of the imaged file wrapper.

On or about January 25, 2008, Applicants' attorney contacted the Examiner to determine whether anything was wrong with the RCE. Applicants' attorney also contacted the docketing specialist, Ms. Middleton. Applicants' attorney learned for the first time on January 25, 2008 from Ms. Middleton that the PTO considered the RCE defective. Applicants' attorney again requested (a) confirmation that Applicants would be given additional time to correct any defects, and (b) a written Notice confirming that the Oct. 31st RCE contained previously unknown defects. The Examiner and Docketing Specialist confirmed that Applicants would be given time to correct defects and that a written Notice was forthcoming.

On January 31, 2008, Applicants learned for the first time from the Examiner that the PTO may in fact not send out a notice setting additional time for completing the RCE, although the Supervisory Examiner believes the RCE should be accepted.

Applicants filed on that same date a supplemental submission canceling all claims that were subject to a rejection. Upon entry of the Submission amendments, only allowed claims will be pending.

The imaged file wrapper suggests that the PTO has accepted the Oct. 31st RCE and has not made any objections to it. Accordingly, Applicants request confirmation that the October 31st RCE was timely and proper, either alone or with Applicants' Supplemental submission of January 31, 2008.

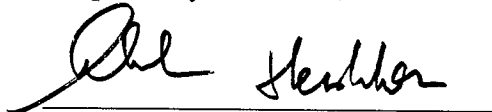
In the alternative, if the RCE and supplemental submission are not proper and timely, Applicants petition under 37 C.F.R. §137(b) for revival based on unintentional delay. The entire delay in filing a proper RCE and submission was unintentional.

If any additional fees are required for consideration of the petition filed herein, or to maintain pendency of the application, the Commissioner is hereby

authorized to charge such fees, or credit any overpayment or unnecessary payment, to Deposit Account No. 50-2929.

Please direct questions related to this Petition to the undersigned. All future communications should be sent to the address of record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Abraham HersHKovitz', written over a horizontal line.

Abraham HersHKovitz
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Date: Feb. 5, 2008

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